

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

UNITED STATES OF AMERICA . CR. NO. H-12-272  
VS. . HOUSTON, TEXAS  
TERRY GLENN SILLERS, ET AL . NOVEMBER 20, 2013  
2:00 P.M. to 2:18 P.M.

TRANSCRIPT of SCHEDULING CONFERENCE  
BEFORE THE HONORABLE SIM LAKE  
UNITED STATES DISTRICT JUDGE

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District Court, Southern District of Texas.

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## P R O C E E D I N G S

*THE COURT:* Good afternoon. Please be seated.

We're here this afternoon in Criminal Action H-12-272, United States versus Terry Glenn Sillers, et al. Beginning with counsel for the government, will counsel please identify themselves and their clients for the record.

*MR. KARPEL:* Good afternoon, Your Honor. David Karpel, Tim Braley, and Ed Gallagher for the United States.

*THE COURT:* Let's start way over here and just move to the left.

*MR. LATIMER:* Your Honor, Louis Latimer for Stephen Mullen.

*MR. HAMM:* Judge, Lance Hamm for Tammy Wall.

*MR. PODOLSKY:* Brett Podolsky for Clay Kirkland.

*MR. SAPER:* Gus Saper for Terry Ross Blake.

*MR. GAITHER:* Trent Gaither for Richard Lamphere.

*MR. MARTIN:* Tom Martin for Fredrick Michal Villarreal.

*MR. JONES:* Good afternoon, Your Honor. Robert Jones for Rusty Duke.

*MR. WENTZ:* Kurt Wentz and John Parras for Jamie Loveall.

*MS. DEBORDE:* Nicole DeBorde for Ken Hancock.

*MR. WILSON:* Lee Wilson for James Burns.

*MR. EASTEPP:* Larry Eastepp for James Sampsell.

1           *MR. BOURQUE:* Gerald Bourque for Brian Thomas.

2           *MS. JANA:* Sue Jana for Billy Seay.

3           *MR. ESSMYER:* Mike Essmyer for Mr. Lamphere.

4           *MR. LAMBRIGHT:* Don Lambright for Sammy Shipman.

5           *MR. STAFFORD:* Your Honor, James Stafford for Larry  
6 Bryan. I'm also standing in for Eric Reed for Ronald Prince.

7           *MR. MCGUIRE:* And Ken McGuire for James Sharron, Your  
8 Honor.

9           *MR. FICKMAN:* Robert Fickman for David Roberts, Your  
10 Honor.

11           *MR. ODOM:* And Wendell Odom for Kelly Elley.

12           *THE COURT:* All right. Thank you.

13                   There's a couple of things I want to discuss.  
14 First, no defendants remain eligible for the death penalty in  
15 this case. Sixteen defendants have pled guilty or are  
16 scheduled to plead guilty this week. The first thing we need  
17 is a scheduling order for the remaining defendants. I assumed  
18 that counsel would have discussed this matter with the  
19 government before today and was hopeful that the attorneys  
20 would propose a scheduling order today. So I'll hear from the  
21 government.

22           *MR. KARPEL:* Your Honor, I can tell you that we  
23 haven't had discussions with individual counsel about a  
24 scheduling order per se, but we have had discussions with  
25 defense counsel about the next production run of discovery,

1 which is being developed this week and is going to go out next  
2 week or no later than the week after. It comprises essentially  
3 3500 material -- Jencks material and about a thousand pieces of  
4 evidence that we're pushing out now, and that's the third  
5 production run in this case.

6 I can also tell you, Judge, that we are in  
7 discussions with a number of the defense counsel in this room  
8 with respect to plea negotiations and in most cases those plea  
9 negotiations are in their advanced stage.

10 *THE COURT:* Do you anticipate any further production  
11 after the third production?

12 *MR. KARPEL:* I do, but I think it's going to be  
13 relatively -- it's going to be much smaller and will be  
14 essentially confined to a number of codefendants who have  
15 entered pleas.

16 *THE COURT:* All right. Let's see. How about a trial  
17 date of March 31st?

18 *MR. KARPEL:* Your Honor, if the Court's amenable, our  
19 proposal would be a June trial date, given the amount of  
20 discovery that we're -- that's going out, the number of pleas  
21 we expect to conclude, and I think that will give us time to  
22 further sharpen exactly how many, if any, defendants remain for  
23 a trial.

24 *THE COURT:* Whenever I set a case for trial in June, I  
25 get a number of motions saying, I've already scheduled a



1 vacation. Our family is looking forward to it. I have prepaid  
2 tickets to Antigua or some other esoteric climb. Please don't  
3 make me go to trial this summer, Judge.

4 And I'm told that even if I set the trial now.  
5 So we're going to set it for May. Is there any reason you  
6 couldn't be available late April, early May?

7 *MR. KARPEL:* I think May will work for the government,  
8 Judge.

9 *THE COURT:* Okay. How about May 5th?

10 *MR. STAFFORD:* Judge, I'm going to be in Italy  
11 May 5th. I've already got my ticket, but the following week --

12 *THE COURT:* What about May 12th, will you be back  
13 then?

14 *MR. STAFFORD:* Let me check.

15 *MR. PARRAS:* Judge, I like the early June date. I was  
16 expected to be out in late May.

17 *THE COURT:* Does anybody have a scheduled vacation in  
18 June?

19 *MR. HAMM:* Yes. On behalf of Tammy Wall, I do, Your  
20 Honor.

21 *THE COURT:* Where are you going?

22 *MR. HAMM:* My daughter graduates. So, we're  
23 semi-chaperoning her to -- she's taking a couple of trips to  
24 Europe and things like that. And then I guess it depends also  
25 on how long the government anticipates the case is going to

1 take. So it we start in May, it still may bleed into June  
2 anyhow.

3 *THE COURT:* May 12th at 1:00 p.m. Somebody is going  
4 to be inconvenienced no matter when I set it with this number  
5 of attorneys.

6 The government will produce all documents by  
7 April 4th. The government will produce its witness list, its  
8 exhibit list, copies of all trial exhibits, and its proposed  
9 jury charge by April 17th.

10 Defendants will produce their witness list, their  
11 exhibit list, copies of their exhibits, and any objections to  
12 the government's charge by May 2nd.

13 If you want a specific jury questionnaire, I want  
14 the parties to confer and submit the proposed questionnaire by  
15 May 2nd. That will be something in addition to the standard  
16 jury questionnaire.

17 All right. Any other issue we need to explore  
18 today regarding the schedule or discovery?

19 *MR. ESSMYER:* In regards to the defendants who are now  
20 no longer death eligible, may we have the ten days or the same  
21 amount of time as given before to file the retaining the same  
22 lawyer, Your Honor?

23 *THE COURT:* I'm coming to that. That's not a  
24 discovery issue, is it?

25 *MR. ESSMYER:* No, Your Honor.

1           *THE COURT:* Okay. Yes.

2           *MR. FICKMAN:* Judge, just if I may inquire, the  
3 government has indicated that there's going to be a Jencks  
4 production in the next few weeks and then later codefendant  
5 materials. There's already, to my knowledge, some Jencks-type  
6 material that's related to codefendants that I'm waiting on to  
7 review with my client, which will influence what he does on his  
8 case, I suspect. So I'm inquiring whether or not what we're  
9 going to get next week or in the next two weeks will include  
10 that.

11           *MR. KARPEL:* In part it will. I can tell the Court  
12 that we are trying to push out all the Jencks material and all  
13 of the evidence as quickly as possible. And the only issue  
14 that we're dealing with is safety issues. And once we can deal  
15 and handle those safety issues with particular defendants,  
16 which is an ongoing issue in this case, then we're comfortable  
17 pushing out the material.

18           *THE COURT:* How long do you think the government's  
19 case will take if we go to trial?

20           *MR. KARPEL:* Your Honor, I think that's going to be  
21 largely dependent on how many defendants we have at the table.  
22 So --

23           *THE COURT:* Have you tried any of these cases?

24           *MR. KARPEL:* I've tried one, Your Honor.

25           *THE COURT:* How long did it take?

1           *MR. KARPEL:* It took two weeks. We had one defendant.

2           *THE COURT:* Okay. You know, you're just going to have  
3 to talk to the government about that, Mr. Fickman.

4           *MR. FICKMAN:* Yes, Your Honor. I was just trying to  
5 get -- pin them down a little bit.

6           *THE COURT:* Okay. The next matter is one that  
7 Mr. Essmyer foreshadowed. The remaining death penalty eligible  
8 defendants, Mr. Lamphere and Mr. Roberts and Mr. Loveall are no  
9 longer eligible for the death penalty. So, as of today the  
10 reimbursement rates will drop to the noncapital eligible rate.

11                   Do any of the attorneys for those three  
12 defendants believe that more than one attorney is going to be  
13 necessary?

14           *MR. ESSMYER:* We do, Your Honor.

15           *THE COURT:* Why?

16           *MR. ESSMYER:* We will have a withdrawal defense. And  
17 so our case may very well be tried. And with a withdrawal  
18 defense, we may have to bring in multiple of the defendants,  
19 the current defendants to say that our client is no longer an  
20 ABT member as of --

21           *THE COURT:* I thought you couldn't withdraw from the  
22 ABT?

23           *MR. ESSMYER:* Well, that's when you need two lawyers.

24           *THE COURT:* Say again.

25           *MR. ESSMYER:* That's when you need two lawyers, Judge.

1           *THE COURT:* I mean, all these people say -- in all the  
2 pleas, is they say if you withdraw, there's a very severe  
3 punishment.

4           *MR. ESSMYER:* And you get maybe put on the X list and  
5 may have an order for your elimination but --

6           *THE COURT:* Does your client have a certificate of  
7 withdrawal?

8           *MR. ESSMYER:* He does, Your Honor.

9           *THE COURT:* Okay. Yes, Mr. Fickman.

10          *MR. FICKMAN:* Judge, I'll also -- I'll file a motion  
11 elaborating on why I believe two lawyers are needed on this  
12 case.

13          *THE COURT:* All right. Any motions to continue with  
14 two lawyers must be filed by November 27th.

15                 Now, I have looked at the budget for this case.  
16 Thus far we've spent over \$400,000 on experts and attorneys'  
17 fees. Some counsel have not even submitted vouchers yet. Some  
18 of the defendants who were capital eligible and are no longer  
19 capital eligible have had budgets approved by Chief Judge  
20 Stewart well over a hundred thousand dollars. Mr. Lamphere has  
21 a budget approved for over \$500,000. Some of the other  
22 defendants are very high.

23                 Defendants -- now listen to this. Defendants who  
24 have had capital eligible budgets approved need to submit a  
25 revised budget, if they've not already done so, and some have,

1 by December 7th.

2 Defendants who were never capital eligible but  
3 who believe their attorney's fees and third-party expenses may  
4 exceed \$30,000 need to submit a budget by December 7th;  
5 otherwise, the expenditures will be limited to \$30,000.

6 Now, I have no way of knowing whether anybody  
7 thinks they'll approach \$30,000, because some of the defendants  
8 who were never capital eligible have not submitted any vouchers  
9 and, of course, they've not submitted a budget. But I don't  
10 want to be surprised and I don't want you to be surprised,  
11 because without a budget approved by the Circuit and by this  
12 Court, you can't spend more than \$30,000.

13 Any questions about the budgetary issues?

14 Okay. Which defendants do you think you're going  
15 to get pleas on fairly quickly? And I know I'm not going to  
16 hold you to it, but who's in the final stages of plea  
17 negotiations, if you could tell me?

18 *MR. KARPEL:* Your Honor, I'm reluctant to actually  
19 mention --

20 *THE COURT:* Okay. All right.

21 *MR. KARPEL:* -- names of the defendants in open court,  
22 but I think we're closing in on about a dozen.

23 *THE COURT:* Okay. What else with this wealth of  
24 talent here today can we explore? Any issues that you think we  
25 need to address?

1           *MR. ODOM:* Judge, the only thing that I would suggest,  
2 and I don't think we have to do this today, but we certainly  
3 might want a status date sometime between now and that May  
4 date. A lot of us are preoccupied with talking to the  
5 government and working out these other issues and not really  
6 focusing on the trial quite yet. If there is such a need, I  
7 assume we could always make a motion to the Court prior to the  
8 trial date in case some of these issues that we might focus in  
9 later on as we get more trial oriented --

10           *THE COURT:* I don't normally set status conferences in  
11 criminal cases because, you know, if there's an issue, I can  
12 rule on it, but I hate to just have everybody come into the  
13 courtroom just to humor me to appear at a status conference.  
14 If you want to plead, I'll set a rearraignment. If there's  
15 some dispute, I'll set a hearing. But you've all -- or most of  
16 you have tried cases in this court. You just know to be here  
17 on noon of the day of trial to look over the questionnaires and  
18 pick the jury and to get me the questionnaires before then.  
19 I've submitted questionnaires in a number of criminal cases. I  
20 don't know if you-all have tried any of them. But there are  
21 plenty of questionnaires out there that you can look at as  
22 examples.

23           *MR. ODOM:* Okay.

24           *THE COURT:* I'm not saying it's always a bad idea, but  
25 I just don't really know what the need for a conference would

1 be.

2           *MR. ODOM:* At this point I don't either. It's more of  
3 a suggestion. But I certainly understand what the Court --

4           *THE COURT:* I mean, if you need a hearing, you know  
5 where I am.

6           *MR. ODOM:* Right. Yes, sir.

7           *THE COURT:* Okay.

8           *MR. MCGUIRE:* Judge, just a quick question about  
9 hearings. Does the Court plan, if we file pretrial hearings  
10 that might really help focus the issues in the case, to rule on  
11 those promptly and not right before trial?

12           *THE COURT:* Well, what kind of issues do you --

13           *MR. MCGUIRE:* Well, suppression issues, Judge.

14           *THE COURT:* That's a good idea. All right. That's a  
15 good idea. I forgot that. Motions to suppress or any other  
16 motion are to be filed by February 7th. Any discovery motions  
17 will be filed by March 7th. Responses to motions to suppress  
18 will be filed by February 24th. And I'll decide then whether a  
19 hearing is necessary.

20           *MR. MCGUIRE:* Your Honor, is the Court going to issue  
21 a written order for these dates? Because I missed -- the first  
22 one was 2/7 for the suppression and --

23           *THE COURT:* You're going to -- I'll issue something  
24 that has the dates, yes.

25           *MR. MCGUIRE:* Okay.



